CRIMINAL REVISION.

E. P. Shanks (Crown Counsel) for the Crown.

Murray-Aynsley, C.J. : — The matter of law under consideration was whether a Magistrate or District Judge having made an order for forfeiture, had power to order payment by instalments. It is clear that there is jurisdiction to decide what sum, if any, is to be paid. Once the order is made there is a debt due to the Crown. In the absence of any express power to do so I do not think that there is any power to order payment by instalments.

Whilst dealing with this subject, it seems to be a suitable occasion to remark that there has been a large number of cases of persons who have been bailed failing to appear. In order to check this it seems necessary to deal firmly with sureties.

In the circumstances I decided not to exercise my powers of revision in this case.

No order.

KEE CHIN THUAN v. REX.

[App. Crim. Juris. (Jobling, J.) April 20, 1951]

[Penang — Criminal Appeal No. 6 of 1951]

Penal Code, ss. 177 and 181 — Giving false information — Giving false evidence — Criminal Procedure Code, ss. 270 and 123(2) — the words "which would have a tendency to expose" — Interpretation of.

The appellant was charged in the Court of the Magistrate, Penang on three counts of giving false information, contrary to section 177 and in the alternative of giving false evidence, contrary to section 181 of the Penal Code. He was convicted in the alternative under section 270 of the Criminal Procedure Code and sentenced to six months rigorous imprisonment on each charge concurrently. Against this conviction the appellant appealed.

It was established by the evidence that the appellant was called before a Police Officer who was investigating an alleged offence of cheating, contrary to section 420 of the Penal Code, and in response to questions made a long statement giving a detailed account of the circumstances of the alleged offence implicating a person named Muniandy. Subsequently when giving evidence at the trial of Muniandy in the Sessions Court appellant made three statements which were material to the issue and directly contrary to statements made by him to the Police Officer.

At the trial of the appellant no evidence was called to show which of the two statements was false and in view of their contradictory nature the Magistrate convicted the appellant in the alternative.

Held, that the words "which would have a tendency to expose" appearing in section 123(2) of the Criminal Procedure Code showed that the section is intended to be given a wide interpretation and it is not construing it too widely to say that had the appellant answered the Police Officer's questions so as to show that Muniandy had nothing to do with the matter, which he now says is the truth, his answers would have tended to expose him to a charge. Under the circumstances the appellant is entitled to the benefit of the exception and the conviction on the principal charge cannot be supported.

Held also, that the falsity of the contradictory statement could not be taken into consideration and no conviction in the alternative under section 270 of the Criminal Procedure Code was possible.

Cases referred to :—

(1) *Hassan bin Ishak v. Public Prosecutor* (Unreported).

(2) *Luckhee Sing* (1869) 12 W. R. (Cr.) 23.

APPEAL from Magistrate's Court, Penang.

R. D. Hume for the appellant.

C. M. Sheridan (D.P.P.) for the Crown.

The facts sufficiently appear from the judgment.

Jobling, J. : — The appellent was charged in the Court of the Magistrate, Penang on three counts of giving false information, contrary to section 177 and in the alternative of giving false evidence, contrary to section 181 of the Penal Code. He was convicted in the alternative under section 270 of the Criminal Procedure Code and sentenced to six months' rigorous imprisonment on each charge concurrently, and has now appealed.

It is established by the evidence that the appellant was called before a Police Officer who was investigating an alleged offence of cheating, contrary to section 420 of the Penal Code, and in response to questions made a long statement giving a detailed account of the circumstances of the alleged offence implicating a person named Muniandy.

Subsequently when giving evidence at the trial of Muniandy in the Sessions Court appellant made three statements which were material to the issue and directly contrary to statements made by him to the Police Officer.

At his trial before the Lower Court on the alternative charges of making false statements the appellant gave evidence that the statement made to the Police Officer was false and was so because he was afraid of being charged with the offence being investigated. He said the evidence given by him before the Sessions Court at the trial of Muniandy was true.

No evidence was called to show which of the two statements was false and in view of their contradictory nature the Magistrate convicted in the alternative.

Mr. Hume for the appellant has submitted that this conviction cannot stand because in the first place the appellant was not legally bound to make the statement to the Police Officer, and secondly he was not legally bound to answer the questions of the Police Officer truthfully.

If either of these submissions is correct there can be no conviction in respect of the statement to the

Police Officer and it would have to be disregarded. Consequently there would then be no evidence that appellant's statements in the Sessions Court were not truthful and there could be no conviction on the alternative charge.

Mr. Hume contended that section 177 of the Penal Code should be read together with section 176 and that this would make it clear that both sections referred only to the giving of first information, e.g. such as that required under sections 21 and 22 of the Criminal Procedure Code, and not to an inquiry under section 123. He submitted that the unreported case of *Hassan bin Ishak v. Public Prosecutor*[1] (Court of Appeal, Criminal Appeal No. 1 of 1948) in which the facts were the same, is not decisive as to the application of section 177 as no argument was addressed to the Court on this point and the judgment does not refer to it.

Section 176 is undoubtedly directed to provide for omissions to give first information but section 177 opens with the words: "Whoever being legally bound to furnish information" and no reason, other than the existence of section 176, has been advanced as to why this phrase should not be construed according to its ordinary meaning.

The same section is in force in India and in the comments on it in Ratanlal's Law of Crimes it is stated that the section does not apply to the case of any person who is examined by a Police Officer and the authority of *Luckhee Sing*[2] is quoted in support. This is a very old decision and as the report of it is not available it is impossible to ascertain from what Court it emanated or exactly what it decided.

On the other hand there is the unreported case of *Hassan bin Ishak v. Public Prosecutor* (*supra*) in which the facts were identical with the present case and the Court of Appeal appears to have accepted without argument that the section covers information given to a Police Officer.

The opening words of the section are wide enough to cover information given under section 123 of the Criminal Procedure Code and I can see no reason why I should not accept the view apparently taken by the Court of Appeal.

I find therefore that the appellant was legally bound to make the statement to the Police Officer.

As regards the second submission that appellant was not bound to answer truthfully the questions of the Police Officer, the evidence shows that the Police Officer was investigating a certain person's complaint that he had been cheated by the transfer to him of land of little value belonging to appellant in the place of valuable land which he had contracted to purchase and paid for. In the course of this investigation the appellant was called before the Police Officer and questioned as to what he knew about the transaction. The questions and answers were directed solely to this particular transaction and appellant made statements which exculpated himself and tended to inculpate a person named Muniandy.

Section 123(2) of the Criminal Procedure Code lays down that a person questioned by a Police Officer when investigating a case "shall be bound to answer truly all questions relating to such case put to him by such Police Officer other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture".

As the appellant was a party to the transaction under investigation and the land concerned was his and was transferred to the complainant by him, there is no doubt that the appellant would have been justified in thinking that he might be in danger of being charged with the alleged offence. But the appellant's belief at the time is not material. The words used in the section are "other than questions the answers to which would have a tendency to expose him to a criminal charge" and they were not intended to give any person who believed he might be charged with an offence *carte blanche* to lie. Mr. Sheridan for the Crown submitted that such question and answer should be considered separately and contended that only one of the three charges could be said to be based on a question the answer to which might have the tendency mentioned. I think however that the questions and answers must be considered in their context.

The appellant told a story in some detail to show that he was an innocent party to the transaction under investigation and Muniandy was the probable offender. As the only parties to the transaction, apart from the complainant, were the appellant and Muniandy it is clear that any question the answer to which would tend to exonerate Muniandy would also tend to inculpate the appellant.

The words "which would have a tendency to expose" show that the section is intended to be given a wide interpretation and I think it is not construing it too widely to say that had the appellant answered the Police Officer's questions so as to show that Muniandy had nothing to do with the matter, which he now says is the truth, his answers would have tended to expose him to a charge.

In my view the circumstances in this instance entitled the appellant to the benefit of the exception.

I find therefore that no conviction on the principal charge can be supported.

As regards the alternative charge of giving false evidence in the Sessions Court the Magistrate had before him on the one hand the contradictory statement made by the appellant to the Police Officer and on the other the appellant's assertion that that statement was false but that his evidence before the Sessions Court was true. The falsity of the contradictory statement cannot now be taken into consideration and no conviction in the alternative under section 270 of the Criminal Procedure Code is possible. We are left with the appellant's uncontradicted assertion that the evidence given in the Sessions Court is true and that must be accepted. No conviction on the alternative charge is therefore supportable.

For the reasons set out above I allow the appeal and quash the conviction and sentence.

Appeal allowed.